

Appln. No.: 09/964,852
Response dated April 23, 2008
Responsive to Office Action of March 19, 2008

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REMARKS/ARGUMENTS

The non-final Office Action of March 19, 2008, has been carefully reviewed and these remarks are responsive thereto. Claims 2, 19, 34, 35, and 40 were previously canceled. Claim 41 is new. Claims 1, 3-18, 20-33, 36-39, and 41 remain pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 1, 3, 4, 10, 15-18, 20, 24, 27, and 36-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,708,961, hereinafter Hylton, in view of U.S. Pub. No. 2005/0204387, hereinafter Knudson. Applicants respectfully traverse this rejection for at least the following reasons.

Independent claim 1 recites, among other features, “. . . re-multiplexing at least a part of the data stream of the first transmissions with data stored locally at the gateway. . .” The Office Action at page 5 correctly notes that Hylton fails to teach storing data locally. However, one of skill in the art would not have had an apparent reason at the time of the invention of claim 1 to modify Hylton to incorporate Knudson in the manner asserted in the Office Action at pages 5-6, for substantially similar reasons as discussed in Applicants’ Amendment dated November 19, 2007, at pages 10-11. Applicants incorporate the referenced remarks included in Applicants’ Amendment herein by way of reference.

In short, the system described in Hylton merely selects program signals from those available on the network 5 for each of the terminals 100, digitally multiplexes those signals together in a single stream and broadcasts that stream. Col. 4, lines 60-64. The whole point of Hylton is to allocate *a program signal* to a set-top terminal 100. See Hylton, col. 8, lines 35-45 and Figure 1. Applicants refer the Office to MPEP § 2143.01 (V. The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose) and (VI. The Proposed Modification Cannot Change The Principle Of Operation Of A Reference). Given that the whole point of Hylton is to allocate a program signal to a set-top terminal 100, there would be no advantage or benefit gained

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in Hylton in re-multiplexing at least a part of a data stream of the first transmissions with data stored locally at a gateway. To do so would unnecessarily add to the complexity of the operation in Hylton because Hylton would subsequently need to again de-multiplex the signal to identify a particular signal for reception by the set top terminal 100. As such, Applicants refer the Office to MPEP § 2141.02 (VI. Prior Art Must Be Considered In Its Entirety, Including Disclosures That Teach Away From The Claims) (providing that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention) (emphasis in original). Thus, notwithstanding whether Knudson discloses the above-noted features as recited in claim 1, the resultant combination is improper for at least the foregoing reasons. Accordingly, claim 1 is patentably distinguishable over Hylton (and Knudson).

Dependent claims 3, 4, 10, 15-17, 36 and 39, which each depend from claim 1, are allowable for at least the same reasons as claim 1.

Independent claim 18 recites features similar to those described above with respect to claim 1. As such, claim 18 is allowable for at least substantially similar reasons as discussed above with respect to claim 1.

Claims 20, 24, 27, and 37, which depend from claim 18, are allowable for at least the same reasons as claim 18.

Claim 38, which depends from claim 29, is allowable for at least the same reasons as claim 29 (as discussed below). Moreover, the Office Action at page 7 correctly indicates that Hylton does not discuss any devices operating as an alarm system. The Office attempts to remedy the deficiencies of Hylton (and Knudson) in taking Official Notice, asserting that it was known in the art at the time of the invention of claim 38 to provide an alarm system in a local cable network. Applicants respectfully request the Office to provide proof/documentation to support such an assertion. Pending such proof/documentation, Applicants submit that claim 38 is further allowable in view of the additional advantageous features recited therein.

Claims 5-9, 13, 14, 22, 23, 29, 31 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hylton, in view of Knudson, and further in view of U.S. Pub. No.

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2002/0188567, hereinafter Candelore. Applicants respectfully traverse this rejection for at least the following reasons.

Independent claim 29 recites features similar to those described above with respect to claim 1. Candelore fails to cure the deficiencies of Hylton and Knudson noted above as discussed in conjunction with claim 1, and as described in Applicants' Amendment dated November 19, 2007, at pages 10-11. As such, claim 29 is allowable over the applied references for at least substantially similar reasons.

Claims 5-9, 13, 14, 22, 23, 31 and 33, which each depend from at least one of claims 1, 18, and 29, are allowable for at least the same reasons as their respective base claims, and further in view of the additional advantageous features recited therein.

For example, claim 7 recites, "wherein the data stream is de-scrambled using a password." The Office Action at pages 8-9 correctly indicates that Candelore fails to disclose the use of a password as recited in claim 7. The Office attempts to remedy the deficiencies of Candelore (and the other applied references) in taking Official Notice that at the time of the invention of claim 7 that the use of password protection to restrict accounts to authorized account holders was old in the art, and that it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combination of Hylton and Candelore (and presumably Knudson too) to use password protection for the known purpose of preventing unauthorized users from access to a subscriber's account.

Applicants' Amendment dated November 19, 2007, at pages 11-12, discussed the reasons why one of ordinary skill in the art would not have had an apparent reason to modify Hylton and Candelore in the manner suggested in the Office Action. Applicants incorporate those remarks herein by way of reference. Despite the fact that claim 7 now stands rejected based on the additional Knudson reference, the Office does not rely on Knudson as allegedly disclosing the recited features of claim 7. As such, the Office has simply regurgitated the substance of the rejection as applied in the Office Action dated September 19, 2007¹, without specifically addressing Applicants' remarks in the

¹ Compare the Office Action of September 19, 2007 at pages 6-7 with the present Office Action (dated March 19, 2008) at pages 8-9.

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Amendment dated November 19, 2007, at pages 11-12.² Applicants refer the Office to MPEP § 707.07(f) (providing that where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it). Applicants respectfully request the Office to respond to the substance of Applicants' remarks in the Amendment dated November 19, 2007, at pages 11-12, in order to provide Applicants with a more substantive basis for responding. For at least the additional reasons discussed in the Amendment, Applicants submit that claim 7 is allowable over the applied references in view of the advantageous features recited therein.

Claims 11, 12, 21, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hylton, in view of Knudson, and further in view of U.S. Pat. No. 7,107,605, hereinafter Janik. This rejection is traversed.

Claims 11, 12, 21, and 28, which each depend from at least one of claims 1 and 18, are allowable for at least the same reasons as their respective base claims because Janik fails to cure the above-noted deficiencies of Hylton and Knudson with respect to claims 1 and 18.

Claims 25, 26, 30, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hylton, Kundson, and Janik, and further in view of Candelore. This rejection is traversed.

Claims 25, 26, 30, and 32, which each depend from at least one of claims 1, 18, and 29, are allowable for at least the same reasons as their respective base claims.

New Claim 41

New claim 41 is allowable at least for the same reasons as the other independent claims. No new matter has been added.

² See, e.g., the present Office Action (dated March 19, 2008) at pages 2-3 (Response to Arguments), which fails to address Applicants remarks with respect to claim 7.

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CONCLUSION

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the Examiner is requested to contact Applicant's undersigned counsel at (202) 824-3153.

Respectfully submitted,

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Dated: April 23, 2008

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